

U.S.C. 1436) apply, and any aircraft used in connection with any such violation shall be subject to seizure and forfeiture, as provided for in the Customs laws. A penalty or forfeiture may be mitigated under part 171 of this chapter.

[T.D. 91-61, 56 FR 32086, July 15, 1991]

§ 122.162 Failure to notify and explain differences in air cargo manifest.

(a) *Application.* Penalties shall be assessed if differences in an air cargo manifest (overages or shortages) are discovered and:

- (1) The required notice and explanation are not made in time;
- (2) The port director is not satisfied that the differences were caused by clerical error or other mistake;
- (3) There has been a loss of revenue to the U.S.; or
- (4) The port director is not satisfied that there was a valid reason for delay in reporting any differences.

(b) *Definition.* Under this section, "clerical error or other mistake" means a non-negligent, inadvertent, or typographical mistake, made when the manifest is prepared, assembled or submitted.

(c) *Repeated differences.* If repeated differences are found in manifests filed by the same person, it may be determined that the differences were a result of negligence and not clerical error or other mistake.

(d) *Knowledge.* A penalty may be assessed for differences in a manifest that are unknown to the aircraft commander or owner.

§ 122.163 Transit air cargo traveling to U.S. ports.

(a) *Application.* If transit air cargo is traveling from the port of arrival to another U.S. port under §122.119, a liability shall be assessed, as set out in §18.8 of this chapter if there has been:

- (1) Shortage in delivery;
- (2) Irregular delivery; or
- (3) Non-delivery.

(b) *Liabilities assessed.* The liabilities assessed under this section are imposed as liquidated damages under a carrier's bond.

(c) *Value of merchandise.* The port director shall determine the value of

merchandise for assessment purposes based on the following factors:

- (1) Any data or documents available to the airline which presented a receipt for the transit air cargo, and available to the importing airline relating to the description and value of the cargo; and
- (2) Other information available to the port director relating to the same or similar merchandise. If the data or documents required by this section are not submitted within 90 days of the date requested, the port director shall determine value on the basis of other available information. The transit air cargo manifest does not reflect value.

§ 122.164 Transportation to another port for exportation.

If transit air cargo is traveling from the port of arrival to another U.S. port for later exportation, any liquidated damages for shortages or irregular delivery shall be assessed as provided in §122.163.

§ 122.165 Air cabotage.

(a) The air cabotage law (49 U.S.C. App. 1508(b)) prohibits the transportation of persons, property, or mail for compensation or hire between points of the U.S. in a foreign civil aircraft. The term "foreign civil aircraft" includes all aircraft that are not of U.S. registration except those foreign-registered aircraft leased or chartered to a U.S. air carrier and operated under the authority of regulations issued by the Department of Transportation, as provided for in 14 CFR 121.153, and those aircraft used exclusively in the service of any government.

(b) Customs officers detecting possible violations shall report the matter to Headquarters, Attention: Entry and Carrier Rulings Branch. Liability should not be assessed under 49 U.S.C. App. 1471 pending instructions from Headquarters since certain limited domestic transportation by foreign civil aircraft is permitted under regulations issued by the Department of Transportation.

§ 122.166 Arrival, departure, discharge, and documentation.

(a) *Liability for civil penalties.* Except as otherwise provided, any aircraft pilot violation of the requirements of